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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,335	05/12/2008	Howard Lee Loewenthal	ANDP101US	8371

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EXAMINER

SIMMS JR, JOHN ELLIOTT

ART UNIT	PAPER NUMBER
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3711

MAIL DATE	DELIVERY MODE
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03/07/2012

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/590,335	Applicant(s) LOEWENTHAL ET AL.	
	Examiner JOHN E. SIMMS JR	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2012.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-21 (claims renumbered by examiner) is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-21 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 23 January 2012 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the device having a curved tube and a non-linear tube, as set forth in Claim 7, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 4 is objected to in that the terms "outer diameter" and "inner diameter", in lines 3 and 4, are unclear in that a diameter generally refers to a dimension measured across a body and is incompatible with the terms "inner" and "outer", which generally relate to a surface.

Claim 6 is objected to because the preamble recites, "the one piece valve assembly of claim 5", when claim 5 is a device.

Claim 7 is objected to because the "curved tube and nonlinear tube" suggest two tubes and the specification supports only one tube in a given embodiment of the device.

Claim 12 is objected to in that the limitation, "a second opening", in line 7, purports to re-introduce the second opening in the second end, initially introduced in line 4.

Claim 16 (first) and Claim 16 (second) are objected to as being improperly numbered. The examiner has assigned claim number 17 to Claim 16 (second) and renumbered subsequent claims consecutively.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation, "expanding air will flow in a first direction through the first

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opening or the second opening” is unclear in that it cannot be determined whether the referenced first and second openings are the first and second openings in the tube or in the valve chambers.

The scope of the claim is indefinite.

Claims 13 and 20 are rejected under 35 USC 112 4th paragraph, as being an improper dependent claim for failing to further limit the subject matter of the claim upon which it depends. Claims 13 and 20 each incorporate the limitations of Claim 12 but no further structural limitations are present. As the Federal Circuit treats non-compliance with 35 USC 112 4th paragraph as a patentability issue, it is considered more appropriate to treat a claim that does not comply with 35 USC 112 4th paragraph by rejecting the claim under 35 USC 112 4th rather than by objecting to such claim under 37 CFR 1.75(c) as provided for in MPEP 608.01(n)(II). See *Pfizer Inc. v. Ranbaxy Labs., Ltd.*, 457 F.3d 1284, 1291-92 (Fed. Cir. 2006)

Claim Rejections - 35 USC § 103

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1, 2, 3, 4, 9, 10, 12, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caulfield, U.S. Patent No. 2, 172,575, in view of Godfrey, et al., U.S. Patent No. 6,575,204. As to Claim 1, Caulfield teaches a leak resistant siphoning device including an elongated hollow tube (14), having a first opening at a first end and a valve assembly (2, 3, 6), page 1, Col. 1, ln. 50-53, and see Figure 1. Caulfield teaches a second opening at a second end of the tube and a bulb (1), see Figure 1. The examiner notes that the bulb (1) may be stretched over the open end of a nipple on a boss on the first end of the tube (14), see Figure 1, and that, the valve assembly is configured for insertion or removal into or from an inside diameter of the boss, page 1, ln. 25-35. The components of Caulfield provide the same functional capability, as the claimed invention, in that the bulb may be placed in communication with the first end of the tube, except that the boss and nipple are interposed between the bulb and the first end of the tube. It would have been an obvious matter of design choice to form the boss and nipple as integral parts of the tube since the applicant has not disclosed that a one-piece design solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the boss and nipple. Caulfield does not teach a bulb without a vent or a device without metal components. Godfrey teaches a siphoning device (10) with no vent and no metal components, Col. 2, ln. 47, Col. 3, ln. 3, and see Figure 2. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield with no vent and non-metal construction, as taught by Godfrey, to provide Caulfield with bulb having a single opening and no metal parts, to yield the predictable result of simplifying the design. Caulfield, as modified, teaches the claimed invention, except for a multi-part valve assembly instead of a

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one piece valve assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct a one piece valve assembly, since it has been held that use of one piece construction instead of rigidly secured parts is an obvious matter of engineering choice, *In re Larson*, 340 F. 2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

5. As to Claim 2, Caulfield teaches no second valve assembly, see Figure 1, and a valve assembly outer diameter configured to create an interference fit with the inside diameter of a boss (11) on the tube first opening, see Figure 1. Caulfield, as modified, teaches the claimed invention, except for interposing the boss between the valve assembly and the tube first end. It would have been an obvious matter of design choice to form the boss integral with the tube first end, since the applicant has not disclosed that a one-piece design solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the boss. As to Claims 3 and 13, Caulfield teaches a device having a first axis parallel to a long axis of a tube (14), when the tube is in a vertical position, see Figure 1, and a second axis at ninety degrees and perpendicular to the first axis, see Figure 1. The examiner notes that the device of Caulfield is capable of being turned to approximately less than ninety degrees without leaking fluid. With particular regard to Claim 13, Caulfield does not show a second valve assembly. As to Claim 4, Caulfield teaches an alternative embodiment of a device having a valve assembly (2, 3, 8, 11, 16), page 1, Col. 1, ln. 50-53, and see Figure 3, and including a first valve chamber with a first opening, in the first valve chamber, and a second valve chamber with a second opening, in the second valve chamber, that operate in opposing directions, page 2, Col. 1, ln. 43-60, and see Figure 3, reproduced below. The examiner notes that to fill the tube (14) expanding air will flow in a first

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direction through a first opening or a second opening and expelled air from the bulb (1), to empty fluid will flow in a second direction opposite of the first opening or the opposite of the second opening, page 2, Col. 1, ln. 75 - Col. 2, ln. 4. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield with the features exhibited in Figure 3, as suggested, to provide first and second chambers with first and second openings, as suggested, to incorporate a valve assembly having first and second valve chambers. Caulfield, as modified, teaches the claimed invention, except for showing the outer surface of the tube (14) forming a seal with the inner surface of the valve assembly, instead of the outer surface of the valve assembly forming a seal with the inner surface of the tube. It would have been an obvious matter of design choice to reverse the male and female aspects of the valve assembly and tube since applicant has not disclosed that the specific choice of fitting the valve assembly into the tube solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the tube fitting into the valve assembly, as taught by Caulfield. As to Claim 9, Caulfield teaches a manually closeable vent hole (5), page 2, Col. 1, ln. 1-5. As to Claim 10, Caulfield teaches an elastomeric bulb (1) having a weighted portion of its surface (8), see Figure 1. The examiner notes that the weighted portion would cause the device to rest on the weighted portion (8), when placed on its side. As to Claim 12, Caulfield teaches a leak resistant siphoning device including an elongated hollow tube (14), having a first opening at a first end, a second opening at a second end and an elongated body region between the first end and the second end, and a valve assembly (2, 8, 11), page 1, Col. 1, ln. 50-53, and see Figure 3. Caulfield teaches a second end of the tube having an interior comprising a tapered tubular

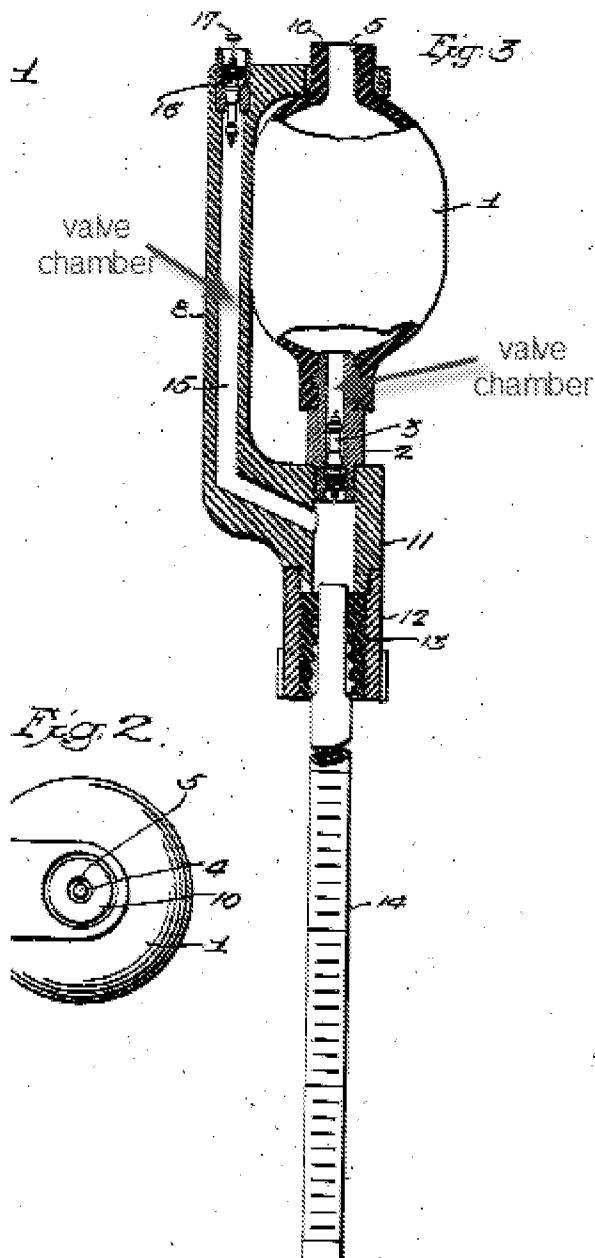
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surface and a bulb (1), at the second end second opening, see Figure 3. The examiner notes that the valve assembly (2, 8, 11) is configured for connection to the second opening of the second end and the outer diameter of the valve assembly (2, 8, 11) forms a non-fixed seal with the inner diameter of the second end of the tube (14), page 1, Col. 2, ln. 36-37.

Caulfield teaches a first valve chamber and a second valve chamber with a first opening in the first valve chamber and a second opening in the second valve chamber that operate in opposing directions, page 2, Col. 1, ln. 61 – Col. 2, ln. 4. Caulfield teaches the second end of the tube being inserted into the valve assembly instead of the valve assembly being configured for partial insertion in the second end of the tube. The obviousness rationale supporting the reversal of male and female connection, as applied in Claim 4, is considered equally applicable. Caulfield teaches a multi-part valve assembly rather than a one piece molded structure. The obviousness rationale, as applied in the treatment of Claim 6, below, is considered equally applicable. Godfrey is applied as in Claim 1, regarding the absence of metal components. As to Claim 15, Caulfield is applied as in Claim 2.

1.

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2.

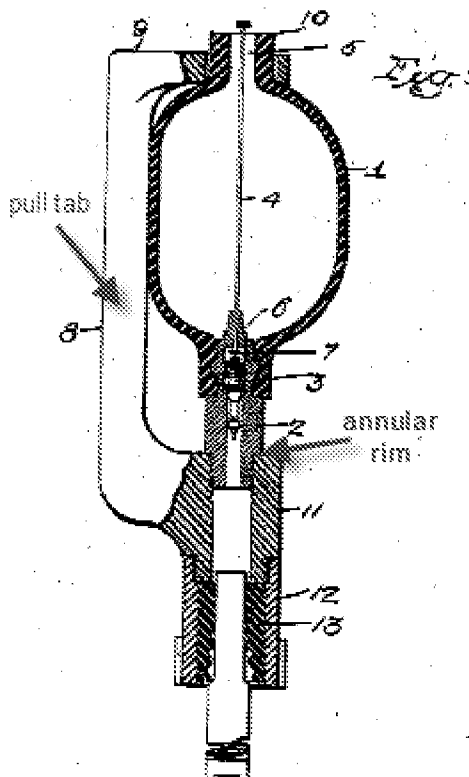
5. Claims 5, 6, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caulfield, in view of Godfrey, and in further view of Porter, U.S. Patent No. 5,875,823 and Suter, U.S. Patent No. 5,992,311. Caulfield, as modified by Godfrey, substantially shows the claimed limitations as discussed above. As to Claims 5 and 14, Caulfield teaches a valve assembly comprising an elastomer, page 1, Col. 2, ln. 35-36. Caulfield, as modified, is silent as

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to the inclusion of plastic, silicone, and a polymer. Porter teaches a baster (100) formed using rubber, silicone, or other polymeric materials, Col. 4, ln. 36-37. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield, as modified, with a valve assembly formed of an elastomer, silicone, and a polymer, as taught by Porter, to provide Caulfield, as modified, with a valve assembly formed of multiple materials, as taught by Porter, to provide Caulfield with a valve assembly formed of specifically selected materials to yield the predictable result of providing a suitable structure at a minimum cost. Caulfield, as modified, teaches the claimed invention, except for indicating the use of plastic, in the valve assembly. Suter teaches a juice extractor (50) having a valve assembly formed of plastic, Col. 11, ln. 40-42. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate plastic material into the valve assembly, as taught by Suter, to provide Caulfield, as modified, with an additional material forming the valve assembly, to yield the predictable result of providing a valve assembly incorporating the most advantageous composition. With particular regard to Claim 14, Porter teaches a valve assembly excluding metals. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield, as modified, with a valve assembly having no metals, as taught by Porter, to provide Caulfield, as modified, with a non-metal construction, to yield the predictable result of reducing costs. As to Claim 6, Caulfield teaches a single valve opening/slit in the valve assembly, see Figure 1, the valve assembly having an annular rim, which limits insertion of the valve assembly into a boss (11) which forms a seal with the tube (14) and a pull tab (8) configured to allow the valve assembly to be removed from the tube (14), see reproduced Figure 1, below. Caulfield, as modified, teaches the claimed invention, except for teaching the

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valve assembly being inserted into the boss, which is sealed with the tube instead of showing the valve assembly inserted directly into the tube. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the boss to be integral with the valve assembly, since it has been held that use of one piece construction instead of rigidly secured parts is an obvious matter of engineering choice, *In re Larson*, 340 F. 2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).



6.

As to Claim 11, Caulfield is applied as in Claim 6. Porter teaches a first end of the tube outer surface having circumferential grooves (105) to line up with grooves in the tube inner surface of the bulb opening, Col. 4, ln. 43-46, and see Figure 1. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield, as modified, with mating grooves in the tube and bulb, as taught by Porter, to provide Caulfield, as modified, with

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cooperating features to seal the connection between bulb and tube, to yield the predictable result of enhancing the air retaining capability of the device.

6. Claims 7, 8, and 16, 17, 18, 19, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caulfield, in view of Godfrey, and in further view of Porter. Caulfield, as modified, by Godfrey, substantially shows the claimed limitations, as discussed above. As to Claim 7, Caulfield, as modified, is silent as to a curved tube or a non-linear tube. Porter teaches a baster (1000) having a curved and non-linear tube, see Figure 10. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield, as modified, with a curved and non-linear tube, as taught by Porter, to provide Caulfield, as modified, with a tube suitable for reaching into a relatively deep vessel to yield the predictable result of facilitating use of the baster with a vessel in an oven. Claim 7 is treated as best understood in view of the drawing objection. As to Claim 8, Porter teaches a valve assembly (120) integral with a bulb (104). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield, as modified, with an integral valve assembly and bulb, as taught by Porter, to provide Caulfield, as modified, with integral valve assembly and bulb, to yield the predictable result of improving the air retention capability of the device. As to Claim 16 (first), Caulfield teaches a valve assembly (2, 8, 11) consisting of a single bi-directional valve assembly that operates in two directions, page 1, Col. 1, ln. 61 – Col. 2, ln. 4, and see Figure 3. Caulfield is silent as to the valve assembly being elastomeric. Porter teaches an elastomeric valve assembly (120), Col. 4, ln. 31-38. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield, as modified, with an elastomeric valve assembly, as taught by Porter, to provide Caulfield, as modified, with an elastomeric valve

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assembly, to yield the predictable result of reducing costs. As to Claim 16 (second), now 17, Caulfield, Godfrey and Porter are applied as in Claim 11. As to Claim 18, Caulfield, Godfrey and Porter are applied as in Claim 9. As to Claim 19, Porter discloses a baster having a ball valve (708) and a baster having a reed valve (810), Col. 6, ln. 65-67, Col. 7, ln. 6-10, and see Figures 7A, 7B, and 8. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide Caulfield, as modified, with a ball valve and a reed valve, as taught by Porter, to provide Caulfield, as modified, with alternate valve types, to yield the predictable result of reducing costs. As to Claim 20, Caulfield, Godfrey, and Porter are applied as in Claim 12. As to Claim 21, Caulfield, Godfrey, and Porter are applied as in Claim 10 and further, Caulfield teaches a flat on the surface of the device, (at 8, 9).

The examiner notes that the Claims, in this case, are treated as best understood, in view of the claim objections and rejections under 35 U.S.C. section 112, second paragraph.

Response to Arguments

3. Applicant's arguments with respect to claims 1-18 have been considered but are moot because the arguments do not apply to any of the references as they are being used in the current rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art references teach known configurations for basters. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN E. SIMMS JR whose telephone number is (571)270-7474. The examiner can normally be reached on M-F 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHN E SIMMS JR/
Examiner, Art Unit 3711
5 March 2012
/Gene Kim/

Supervisory Patent Examiner, Art Unit 3711